IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11 / 03 / 2026
PRONOUNCED ON : 18 / 03 / 2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR. JUSTICE K.GOVINDARAJAN THILAKAVADI

O.SA.No.49 of 2021

Southern Railway
Represented by its
Senior Divisional Commercial Manager,
Chennai Division, Southern Railway,
2nd Floor, NGO Annexe, Park Town,
Chennai - 600 003. ... Appellant

Vs.

Mrs.G.Bharathi ... Respondent

Prayer: This Original Side Appeal is filed under Clause 15 of the Letters Patent) Under Order XXXVI Rule (1) of C.P.C. r/w O.S.Rules 8, challenging the order dated 06.03.2020 passed by the learned Single Judge in O.P.No.584 of 2019.

For Appellant : Mr.V.Radhakrishnan
Senior Counsel
For Mr.M.Vijay Anand

For Respondent : Mr.V.Raghavachari
Senior Advocate
For Mr.V.S.Senthil Kumar

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JUDGMENT

P.VELMURUGAN, J.

This Original Side Appeal is filed challenging the order dated 06.03.2020 passed by the learned Single Judge in O.P.No.584 of 2019, whereby the learned Single Judge dismissed the petition filed by the Railways under Section 34 of the Arbitration and Conciliation Act, 1996 and upheld the arbitral award dated 07.01.2019.

2. The brief facts of the case are that the respondent belongs to the Scheduled Tribe community and, under a scheme earmarking certain catering stalls for persons belonging to the Scheduled Tribe category, the Railway Administration invited bids for grant of licence to run Catering Stall No.SMU-5 at Platform No.2A/3 of Chennai Central Railway Station.

Pursuant to the said tender, the respondent submitted her bid, which was accepted, and a Letter of Acceptance dated 02.02.2015 was issued in her favour granting licence to run the said catering stall for a period of five years, from 04.03.2015 to 03.03.2020. As per the terms of the allotment, the respondent paid a provisional licence fee of Rs.93,000/- and also remitted a security deposit calculated at 10% of the total licence fee for the entire licence period. The total licence fee for the said five-year period was fixed at Rs.46,50,000/-, payable annually in accordance with the terms of the agreement. Thereafter, the respondent commenced business in March 2015. During the course of the licence period, the Railway Administration conducted several inspections and alleged certain irregularities, such as misuse of space, sale of food packets without proper stamping, lack of adequate hygiene, and engagement of staff without proper identity cards and medical certificates. On the basis of these alleged violations, fines were imposed and warnings were issued. Subsequently, the licence was terminated by the Railway Administration by proceedings dated 22.08.2017, though the stall had already remained closed from March 2017. Aggrieved by the said termination, the respondent invoked the arbitration clause, and the sole Arbitrator, upon consideration of the claims and counterclaims,

allowed the claim of the respondent holding that the termination was unjustified and rejected the counterclaims of the Railways.

3. The Railways challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, by filing O.P.No.584 of 2019. The learned Single Judge dismissed the petition, by holding that the scope of interference under Section 34 is limited to specific grounds such as patent illegality or violation of public policy. The Court cannot re-appreciate evidence or substitute its own view for that of the arbitrator. The arbitrator had considered the inspection reports and the explanations offered by the respondent and arrived at factual findings. The learned Judge concluded that the award did not suffer from any patent illegality, nor was it contrary to public policy, and therefore it could not be interfered with.

4. Challenging this order, the Railways have now filed the present appeal.

5. The learned senior counsel appearing for the appellant submitted that the order passed by the learned Single Judge is contrary to law and suffers from errors apparent on the face of the record. It was contended that the learned Judge failed to appreciate that the arbitral award is vitiated by patent illegality within the meaning of Section 34(2A) of the Arbitration and Conciliation Act, 1996. The learned senior counsel further submitted that the relief granted by the learned Arbitrator is legally unsustainable. According to the appellant, the claim made before the Arbitral Tribunal itself was barred under Section 14(d) of the Specific Relief Act, 1963 (formerly Section 14(1)(c) prior to the 2018 amendment), since the contract in question is determinable in nature. The licence granted to the respondent to run a catering stall is only a licence within the meaning of Section 52 of the Easement Act, which merely confers permission to carry on an activity on the property of the licensor and does not create any interest in the property. Such a licence is inherently revocable and determinable. Therefore, in view of Section 14(d) of the Specific Relief Act, 1963, such a contract cannot be specifically enforced. It was therefore contended that the direction issued by the learned Arbitrator for renewal of the licence for a further period of three

years is contrary to settled principles of law and is in conflict with the public policy of India.

6. The learned Senior Counsel further submitted that the learned Arbitrator travelled beyond the scope of the arbitration agreement in directing renewal of the licence. The right of renewal is not an automatic or indefinite right but is subject to the terms and conditions of the contract and the discretion of the Railway Administration. Hence, the direction issued by the Arbitral Tribunal to renew the licence travels beyond the terms of the contract and the arbitration clause and is therefore without jurisdiction.

7. The learned senior counsel also contended that the learned Arbitrator failed to consider the documentary evidence produced by the appellant. The appellant had marked several documents as Exhibits R1 to R30 before the Arbitral Tribunal to establish that the respondent had committed repeated breaches of the terms and conditions of the contract. In particular, the show cause notice dated 03.01.2017 marked as Ex.R25 pointed out several irregularities in the operation of the catering stall. In

response to the said notice, the respondent submitted a reply marked as Ex.R28. It was submitted that even prior to this, in several communications including Exs.R5, R8, R10 and R14, the respondent had admitted the irregularities pointed out by the authorities and had sought leniency on the ground that she was an illiterate woman and assured that the defects would be rectified.

8. The learned senior counsel further pointed out that several inspection reports and correspondences evidencing the irregularities were marked as Exs.R7, R9, R11, R13, R15, R18 and R20. According to the appellant, these documents clearly established repeated violations of the contractual conditions by the respondent. However, the learned Arbitrator failed to advert to these materials while rendering the award.

9. According to the learned senior counsel, such non-consideration of material documentary evidence amounts to perversity and renders the award patently illegal. It was further argued that the findings of the learned Arbitrator are based on surmises and conjectures and are not supported by

the evidence on record. The Arbitrator had selectively considered only some of the alleged irregularities while ignoring several other violations established by the appellant's evidence and had placed undue reliance on the explanations offered by the respondent while disregarding the substantial materials produced by the Railway Administration. The learned senior counsel also submitted that the learned Single Judge erred in holding that the grounds raised by the appellant were in the nature of a regular first appeal under Section 96 of the Code of Civil Procedure. On the contrary, the challenge to the arbitral award was made strictly within the limited scope of Section 34 of the Arbitration and Conciliation Act on the well-recognized grounds of patent illegality, perversity and conflict with the public policy of India. It was therefore contended that the arbitral award is vitiated by perversity, irrationality and failure to adopt a proper judicial approach in appreciating the contractual terms and the evidence on record. Consequently, the learned counsel submitted that the award ought to have been set aside by the learned Single Judge. Hence, the learned senior counsel prayed to allow this Appeal. In support of his contention, the learned senior counsel has referred the judgment of Hon'ble Apex Court in the case of ***K.Lubnaa and others Vs. Beevi and others*** *[(2020) 2 SCC 524]*

10. Per contra, the learned senior counsel appearing for the respondent supported the order passed by the learned Single Judge and submitted that the arbitral award does not suffer from any patent illegality warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996. It was contended that the learned Arbitrator had carefully considered the pleadings, the documentary evidence and the inspection reports produced by both parties before arriving at the conclusion that the termination of the licence was not justified.

11. The learned counsel further submitted that the scope of interference under Section 34 is extremely limited and the Court cannot re-appreciate the evidence or substitute its own view for that of the Arbitrator. The Arbitrator, being the final authority on facts, had evaluated the materials placed on record and rendered a reasoned award.

12. It was also submitted that the learned Single Judge had rightly held that the grounds raised by the appellant were essentially an attempt to

re-argue the case on merits, which is impermissible in proceedings under Section 34 of the Act. In support of his submissions, the learned Senior Counsel has referred to the judgment of the Hon'ble Apex Court in the case of ***Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others,*** *[(2024) SCC OnLine SC 2632]*, and the judgment of the High Court in the case of ***Azizur Rehman Gulam and Others v. Radio Restaurant and Others,*** *[2023 SCC OnLine Bom 230]* as well as the judgments in C.M.A. No. 2947 of 2004, dated 12.11.2004, and O.S.A.No.313 of 2019, dated 14.03.2025. The learned Senior Counsel therefore prayed that the appeal be dismissed as devoid of merits.

13. We have carefully considered the submissions made by the learned senior counsel appearing for the appellant as well as the learned senior counsel appearing for the respondent and have also perused the materials placed on record, including the arbitral award and the order passed by the learned Single Judge.

14. At the outset, it is to be noted that the present appeal arises out of proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, wherein the appellant/Railways had challenged the arbitral award dated 07.01.2019. The learned Single Judge, by order dated 06.03.2020, dismissed the petition holding that the arbitral award did not suffer from any patent illegality or violation of public policy warranting interference under Section 34 of the Act.

15. The principal contention of the appellant is that the Arbitral Tribunal exceeded its jurisdiction in directing renewal of the licence for a further period of three years. According to the appellant, the Master Licence Agreement entered into between the parties is, by its very nature, a determinable contract and therefore cannot be specifically enforced under Section 14(d) of the Specific Relief Act, 1963 (formerly Section 14(1)(c) prior to the 2018 amendment). It is further contended that the licence had already been terminated by the Railway Administration on account of repeated breaches committed by the respondent. In such circumstances, the Arbitral Tribunal could not have directed continuation or renewal of the contractual arrangement. The appellant therefore submits that the relief

granted by the Arbitral Tribunal is contrary to the terms of the contract as well as the statutory provisions governing the field.

16. The respondent, on the other hand, contends that the Arbitral Tribunal had duly examined the materials placed on record and arrived at a finding that the termination of the licence was not justified in the facts and circumstances of the case. According to the respondent, the findings recorded by the Arbitral Tribunal represent a plausible view based on appreciation of the evidence on record and therefore the same ought not to be interfered with in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. It is further contended that the plea regarding the determinable nature of the contract and the alleged statutory bar under the Specific Relief Act, 1963 was not specifically raised before the Arbitral Tribunal and therefore the appellant cannot be permitted to raise the said contention for the first time at the appellate stage.

17. We are unable to accept the said contention. It is a well settled principle that a pure question of law which goes to the root of the matter can

be raised and decided at any stage of the proceedings, provided the relevant facts necessary for deciding such question are already available on record. The Hon'ble Supreme Court in ***K.Lubna v. Beevi, reported in (2020) 2 SCC 524,*** has held that when the relevant facts are already on record, a pure question of law can be examined even at the appellate stage. It has been observed as follows:-

> 8. We may notice that the plea sought to be advanced before us, that sub-letting one room would entail eviction from the entire tenancy premises, apparently was never urged before the trial court, the appellate court or the High Court, and forms a part of the pleadings before the Supreme Court, to the extent of being included in the rejoinder to the SLP. Thereafter by way of an interlocutory application, additional grounds were urged where this question was sought to be raised, and leave was granted by this Court post that stage. The net effect, in our view of all of these is that this plea has to be examined; rather this is the only plea to be examined by us in view of the finding of fact recorded by the three courts.
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> 9. The learned counsel for the respondents endeavoured to dissuade us from examining this plea in view of it not having been raised at an earlier stage and thus, no factual basis being laid for the same. However, on perusal of the eviction petition, the notice and the reply, what is found is that the aspect of single tenancy was never disputed. Nor is it disputed that there were different grounds made out for different portions i.e. that the single tenancy was of three rooms, but what the respondents, as tenants, were alleged to have done, to constitute violation of the terms

of the lease was different for the three portions. Such allegations, however, did not find favour ultimately, except to the extent of one of the portions i.e. Room No. 3/476, where the finding reached was of subletting, by the appellate authority, reversing the finding of the trial court on that aspect, and the High Court thereafter affirming the same. Thus, there is a concurrent finding by the final court of fact, as well as in the revision petition.

10. On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law [*Yeswant Deorao Deshmukh* v. *Walchand Ramchand Kothari*, 1950 SCC 766 : 1950 SCR 852 : AIR 1951 SC 16] .

11. No doubt the legal foundation to raise a case by including it in the grounds of appeal is mandated. Such mandate was fulfilled by moving a separate application for permission to urge additional grounds, a course of action, which has already been examined by, and received the imprimatur of this Court in *Chittoori Subbanna* v. *Kudappa Subbanna* [*Chittoori Subbanna* v. *Kudappa Subbanna*, (1965) 2 SCR 661 : AIR 1965 SC 1325].

12. We may also usefully refer to what has been observed by Lord Watson in *Connecticut Fire Insurance Co.* v. *Kavanagh* [*Connecticut Fire Insurance Co.* v. *Kavanagh*, 1892 AC 473] in the following words: (AC p. 480)

> "… When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding

nice questions of fact, in considering which the court of ultimate review is placed in a much less advantageous position than the courts below."

The nature of the agreement and the clauses relating to the licence are not in dispute in the present case. The Master Licence Agreement and the provisions regarding termination and renewal are already part of the record. Therefore, the issue as to whether such a determinable contract can be specifically enforced is purely a question of law arising from the relevant statutory provisions. Hence, this Court is entitled to examine the legality of the relief granted by the Arbitral Tribunal.

18. The learned senior counsel appearing for the respondent also relied upon the judgment of the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice Mills*** *[(2024) SCC OnLine SC 2632]* to contend that the scope of interference under Section 34 of the Arbitration and Conciliation Act is extremely limited.

19. There can be no dispute regarding the limited scope of interference under Section 34 of the Arbitration and Conciliation Act.

However, the said decision would not assist the respondent in the facts of the present case. The issue involved here does not relate to re-appreciation of evidence or re-evaluation of the factual findings recorded by the arbitral tribunal. The challenge raised by the appellant relates to the legality of the relief granted by the arbitrator.

20. The undisputed facts reveal that the respondent was granted a licence to run a catering stall at Chennai Central Railway Station for a fixed period commencing from 04.03.2015 to 03.03.2020. The licence was governed by the terms and conditions contained in the Master Licence Agreement executed between the parties.

21. A perusal of the agreement clearly indicates that the licence granted to the respondent was only a permissive right to use the premises and did not create any interest in the property. Clause 6.5 of the Agreement specifically provides that the licensee shall have only a “right of user on leave and licence basis”.

22. The agreement also confers wide powers upon the Railway Administration to terminate the licence in the event of violations. Article 15 of the Agreement enumerates several events of default including failure to maintain the prescribed standards of service, violation of the conditions of the agreement and persistent complaints regarding the functioning of the stall, viz.,

" ARTICLE 15

EVENTS OF DEFAULT/MATERIAL BREACH WHERE CLAUSE: 42(b) WILL NOT APPLY

The following event(s) shall be deemed to be the event(s) of default or material breach on the part of the Licensee:

(a) If the Licensee fails to start catering service within one (1) month from the Commencement Date as defined in Article 1.1 of the Master License Agreement (Commissioning of Stall)

(b) the Licensee fails to provide satisfactory services as under the License; or

(c) if the Licensee fails to adhere to the desired Performance Levels as determined by Railway at any time during the term of this Agreement; or

(d) if the Railway receives persistent complaints against the Licensee from the passengers or otherwise: or

(e) if the Licensee fails to pay license fee along with interest, if any, to the Railway on or before due dates; or

(f) If the Licensee engages in corrupt or fraudulent practices in execution of catering services under the Agreement; or

(g) if the Licensee fails to provide any information/record within the prescribed time as may be demanded by the Railway from time to time; or

(h) If there is any failure or default at any time on the part of the Licensee to carry out the terms and provisions of this Agreement to the satisfaction of the Railway."

23. More importantly, Article 17.4 of the Agreement provides that either party may terminate the agreement without assigning any reason by giving six months' prior notice in writing. The clause clearly states that:

> "Railway or the Licensee may terminate this Agreement without assigning any reason by giving six months' prior notice in writing."

The presence of such a clause makes it clear that the contract is determinable at the instance of either party.

24. It is also relevant to note that the agreement provides for renewal of the licence only upon satisfactory completion of the original tenure and subject to fulfillment of the prescribed conditions. Renewal of the licence is therefore not automatic and cannot be claimed as a matter of right. In the present case, the respondent did not complete the contractual period and thereafter seek renewal. On the contrary, the licence itself came to be terminated by the Railway Administration on account of repeated violations of the contractual conditions noticed during inspections conducted by the authorities.

25. In these circumstances, the arbitral tribunal not only held that the termination of the licence was illegal but also directed that the licence should continue, including for the period when the stall had remained closed. In addition, it granted the respondent a right of renewal for a further three years. This direction, in effect, forces the continuation and extension of a contractual relationship that had already been terminated under the terms of the agreement.

26. Section 14(d) of the Specific Relief Act, 1963 (formerly Section 14(1)(c) prior to the 2018 amendment) clearly provides that contracts which are in their nature determinable cannot be specifically enforced. Once it is held that the contract between the parties is determinable in nature, the arbitral tribunal could not have granted a direction compelling renewal of the licence.

27. The above principle has also been reiterated by the Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. v. Amritsar Gas Service***

[(1991) 1 SCC 533], wherein it was held that where a contract is by its nature determinable, the court cannot grant specific performance compelling continuation of the contractual relationship and the appropriate remedy, if any, would only be in the nature of damages. At this juncture, it would be useful to refer the relevant portion of the judgment:-

> "12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:
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> > "This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."
>
> This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with

clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (*c*) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained.

The said principle squarely applies to the present case where the licence agreement expressly permits termination and therefore cannot be specifically enforced.

28. When an arbitral tribunal grants a relief which is expressly barred by statutory provisions, the award would suffer from patent illegality

appearing on the face of the award and would fall within the scope of interference under Section 34(2A) of the Arbitration and Conciliation Act, 1996. In the present case, the direction issued by the arbitral tribunal compelling continuation of the licence and granting renewal of a determinable contract is contrary to Section 14(d) of the Specific Relief Act, 1963. The learned Single Judge, while dismissing the petition under Section 34, proceeded on the footing that the challenge raised by the appellant amounted to re-appreciation of evidence. However, the challenge raised by the appellant related to the legality of the relief granted by the arbitral tribunal and therefore required examination within the limited scope of Section 34 of the Act.

29. When an arbitral award grants a relief which is barred by statutory provisions and also travels beyond the terms of the contract between the parties, such an award would clearly fall within the ambit of patent illegality. In the present case, the learned Single Judge did not examine this legal issue while considering the petition under Section 34 and declined to interfere on the ground of the limited scope of review. In these circumstances, the order of the learned Single Judge cannot be sustained.

30. Therefore, we are of the considered view that the arbitral award dated 07.01.2019 suffers from patent illegality and the learned Single Judge was not justified in declining interference under Section 34 of the Arbitration and Conciliation Act, 1996.

31. Accordingly, the order dated 06.03.2020 passed by the learned Single Judge in O.P.No.584 of 2019 is set aside and, consequently, the arbitral award dated 07.01.2019 is also set aside. The appeal is allowed. There shall be no order as to costs.

[P.V.J.,] [K.G.T.J.,]
18/ 03 / 2026

Speaking Order
Neutral Citation case: Yes

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To

The Sub Assistant Registrar,
(Original Side)
Madras High Court,
Chennai.

P.VELMURUGAN. J.
and
K.GOVINDARAJAN THILAKAVADI, J.

r n s

Pre-Delivery Judgement in
O.SA.No.43 of 2026

18 / 03 / 2026